BAIL SLIP

The Appellant/Accused was directed to be released on bail by the order of this Court dated 20/6/03 and madein Crl.MP.4539/03.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 06.07.2007

Coram:-

The Hon'ble Mr. Justice R.REGUPATHI

Criminal Appeal No.744 of 2003

Murugan ... Appellant(Accused)

vs.

State, rep. by
Deputy Superintendent
of Police,
Virudhachalam. ... Respondent(Complainant)

Appeal against the judgment of the Principal Sessions Judge, Cuddalore, passed in S.C. No.79 of 2001, dated 25.04.2003.

For Appellant : Mr.C.Prasanna Venkatesh

For Respondent : Mr.Hasan Mohamed Jinnah,
Govt. Advocate (Crl. Side).

J U D G M E N T

The appellant/sole accused was tried by the learned Principal Sessions Judge, Cuddalore, for offences under Sections 341, 354 & 376 IPC. and Section 3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He was convicted under Section 376 IPC. and sentenced to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.1,000/-, in default, to undergo R.I. for two months. He was also found guilty under Sections 341 and 354 IPC., however, no separate sentence was awarded for those offences. The trial court found him not guilty of the offence under Section 3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

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Aggrieved against the order of conviction and sentence imposed by the trial court, the present appeal has been preferred.

2. Before the trial court, the victim, who is alleged to have subjected to rape by the accused, was examined as PW-1. The victim is deaf and dumb; hence, her evidence was recorded with the help of a Teacher working in the Government School for Deaf and Dumb, Cuddalore, who interpreted her gesticulations. It is her evidence that, on 02.06.2000, at about 5.00 P.M., she was returning from the School for Deaf and Dumb, where she was working and, at that time, the accused intercepted her, caught hold of her tuft, pushed her down on ground, tore her jacket and committed rape on her, causing injuries on the right hand, neck and breasts. It is specifically stated that the accused had bitten the left breast and severed the nipple. PWs-2, 7 and 8 reached the scene of occurrence on hearing the noise of the victim and found her with bleeding injuries. The accused, who was seen running away from the occurrence place, was apprehended by them and produced before the panchayatdars of the village.

Thereafter, on 04.06.2000, at 6 P.M., PW-1, accompanied by her husband PW-6, went to the police station and lodged a complaint. PW-12 Sub Inspector of Police, on receipt of the complaint, registered a case in Crime No.189 of 2000 under Section 376 IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Ex.P-14 is the Printed First Information Report. The Sub Inspector forwarded copy of the printed F.I.R. to his higher officials.

PW-13, the Deputy Superintendent of Police, on receipt of the F.I.R. on 04.06.2000 at 6.30 P.M., commenced the investigation. She went to the scene of occurrence and prepared observation mahazar Ex.P2 and the same was attested by PW-3 and another. Ex.P-15 is the rough sketch. The Deputy Superintendent of Police seized the cloths of the victim viz., MO-1 Petticoat, MO-2 Sari and MO-3 Blouse, under Ex.P-3 Mahazar. She arrested the accused on 05.06.2000 at 3 P.M. The cloths of the accused viz., M.O.4 lungi and M.O.5 T.Shirt, were seized under mahazar Ex.P.4, attested by PW-4.

PW-5 is the Tahsildar, who issued Community Certificate to PW-1 to substantiate that she belongs to 'Adi Dravida' Community.

PW-9 is the Medical Officer, who examined PW-1. After examination of the victim on 06.06.2000 at 3.10 P.M., she has given the following opinion:-

" OPINION:-

1) No evidence of rape.
2) No evidence of spermatozoa wet and stained vaginal smear.
3) Nail Mark in left areola and left nipple.

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4) No teeth injury on chest, face, nipple and vagina.

"

PW-10 is the Medical Officer, who examined the accused and issued potentiality certificate Ex.P9. PW-11 is the Court Clerk. PW-13, after examination of the witnesses and collecting all materials including forensic and medical opinions, filed final report on 28.08.2000.

3. After examination of the prosecution witnesses and marking exhibits, the accused was questioned under Section 313 Cr.P.C., for which, he pleaded innocence. Learned trial Judge, on considering the oral and documentary evidence and upon hearing both sides, convicted and sentenced the accused as aforementioned, resulting in filing of the present Appeal before this Court.

4. Learned counsel for the appellant submits that the victim being deaf and dumb and her evidence before court having been reduced to form through interpretation of the gesticulations made by her, the same has to be scrutinised by court with due diligence and caution. According to him, a close reading of her evidence would reveal that she wanted to convey something; however, what she conveyed has been narrated totally in a different way. He points out that in the F.I.R. it is stated that injuries have been caused by the accused on her breast, neck, hand, mouth etc. while committing rape, whereas, in evidence before court, it has been specifically stated that severe injuries have been caused on breasts to such extent that left nipple has been severed. It is also stated that a surgery has been performed on the left breast. Learned counsel submits that had such serious injury been caused, resulting in performance of surgery, the same would have been noticed by the Medical Officer PW-9, but, she has not at all noticed any such injury/surgery marks. He specifically points out to the opinion of the Doctor to the effect that there is no evidence of rape. In respect of the nail mark in the left areola noticed by the Medical Officer, he submits that the Medical Officer herself has explained the same by stating 'nail marks on the left nipple is possible by herself by her own nail'. In such circumstances, it is contended that the evidence of PW-1 cannot be believed. To substantiate such contention, learned counsel has relied on a decision of the supreme Court reported in 2006 (10) SCC 92 (Sadashiv Ramrao Hadbe vs. State of Maharashtra and another), wherein, the evidence of the prosecutrix was not supported by medical evidence/scientific evidence produced; therefore, finding that absence of injuries on the body improbablise the prosecution version, conviction was set aside by the Apex Court, giving benefit of doubt to the accused.

5. Insofar as the apprehension of the accused while he tried to run away from the scene of occurrence, it is submitted that the said aspect may be a relevant factor to substantiate his presence at the scene of occurrence, but, in the absence of positive materials for the

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commission of rape, the appellant cannot be convicted under Section 376 IPC. particularly when the offence of rape cannot be substantiated in the light of medical evidence. Relying on the evidence of PW-1 corroborated by the testimonies of PWs-2, 7 and 8, at the most, the appellant can be convicted for outraging the modesty of PW-1, and apart from that, there is no material available against him.

6. Per contra, learned Government Advocate submits that the victim in the instant case is deaf and dumb. The appellant, taking advantage of her feeble position, pushed her down, caused injuries and committed rape, which could be seen from the narration of the victim PW-1. Though the medical evidence does not corroborate her statement as to the injuries, other relevant aspects viz., the presence of the accused at the scene of occurrence; PWs-2, 7 and 8 finding the victim with bleeding injuries and torn cloths; and apprehending the accused when he was trying to run away from the scene place, cannot be lost sight of. In such circumstances, the narration given by PW-1 victim coupled with other relevant aspects as aforementioned are sufficient to sustain the conviction and sentence imposed by the trial court.

7. I have perused the materials available on record and carefully considered the rival submissions advanced on either side. No doubt, the evidence of the prosecutrix is sufficient and conviction could be based solely on her evidence. However, in cases of this nature, a careful scrutiny of the evidence is also required to see whether the victim's evidence is corroborated by medical evidence so as to sustain the conviction and sentence under Section 376 IPC. It could be seen from the evidence of PW-1 that she has given graphic picture about the injuries caused on her breast, severance of nipple, etc. The occurrence had taken place on 02.06.2000 and the Medical Officer examined the victim on 06.06.2000. At the time when PW-9 examined the victim, none of those injuries, as described the victim, in particular severance of left nipple/marks of surgery, have been noticed by the Medical Officer. The only injury noticed by the Medical Officer is a nailmark in left areola and left nipple. Further, No injury was found at the neck, fingers or other parts of the body including breast. Had a surgery been performed as a result of severance of nipple, the same would not have been left unnoticed by the Medical Officer. To test the veracity and truthfulness in the statement of the victim, medical evidence plays a vital role and, in the instant case, if medical evidence is relied on, the evidence of the victim may have to be disbelieved insofar as the veracity of the prosecution case is concerned. It is the positive statement of the Medical Officer that there is no evidence of rape. In such circumstances, I am of the considered view that the appellant cannot be convicted for the offence of rape. Even though the offence of rape is not substantiated, on the basis of other materials viz., narration of PW-1, corroborated by the evidence of PWs-2, 7 and 8, one can

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safely come to a conclusion that, in the occurrence, the appellant outraged the modesty of the victim. Cloths of the victim have been recovered and marked as MOs-1 to 3. The act of violence on the victim could be presumed by looking at the torn cloths. Thus, even though there is no positive evidence for commission of rape, I am of the considered view that the victim has been subjected to sexual harrassment and that the appellant has outraged the modesty of PW-1. In such circumstances, while acquitting the appellant/accused of the offence under Section 376 IPC., the conviction given by the trial court for offences punishable under Sections 341 and 354 IPC is confirmed.

8. Learned counsel for the appellant submits that pending investigation and trial, the appellant was in judicial custody for 117 days. I am of the considered view that the period of imprisonment undergone by the appellant could be treated as the period of sentence under Sections 341 and 354 IPC. with a fine of Rs.1,000/- which has already been paid.

9. With the above modification, the appeal is allowed in part.

JI.

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:
1. The Principal Sessions Judge,Cuddalore.

2. The Judicial Magistrate No.I,Vridhachalam.

3. -do- Thro' The Chief Judicial Magistrate, Cuddalore.

4. The Superintendent, Central Prison, Vellore.

5. The Public Prosecutor,High Court,Madras.

6. The Deputy Superintendent of Police,Vridhachalam.

7. The Director General of Police,Chennai.

8.The District Collector, Cuddalore.

+1 cc to Mr.C.Prasanna Venkatesh, Advocate Sr.No.41057.

BK(CO)
dcp/26.7.07 C.A. No.744 of 2003.

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